

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Casados	Team: Team # 5	CCRB Case #: 201003003	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/04/2010 6:30 PM	Location of Incident: East 118th Street and Second Avenue	Precinct: 25	18 Mo. SOL 9/4/2011	EO SOL 9/4/2011	
Date/Time CV Reported Fri, 03/05/2010 5:26 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 03/05/2010 5:26 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christophe Derco	14560	946917	MN IRT
2. POM Christophe Reilly	17570	947387	MN IRT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christophe Derco	Abuse: PO Christopher Derco frisked § 87(2)(b)	
B.POM Christophe Derco	Abuse: PO Christopher Derco searched § 87(2)(b)	
C.POM Christophe Derco	Discourtesy: PO Christopher Derco spoke obscenely and/or rudely to § 87(2)(b)	
D.POM Christophe Derco	Abuse: PO Christopher Derco searched the car in which § 87(2)(b) was an occupant.	
E.POM Christophe Derco	Abuse: PO Christopher Derco refused to provide his name to § 87(2)(b)	
F.POM Christophe Derco	Abuse: PO Christopher Derco issued a summons to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)	§ 87(4-b), § 87(2)(g)	

Case Summary

§ 87(2)(b) filed a complaint with the CCRB via the call processing system on March 5, 2010 (encl. 3).

On March 4, 2010, at approximately 6:32 p.m., § 87(2)(b) was stopped in his vehicle at the intersection of East 118th Street and 2nd Avenue in Manhattan by PO Christopher Derco and PO Christopher Reilly, who were on foot patrol, because § 87(2)(b)'s car was too loud. The following allegations resulted:

- **Allegation A – Abuse of Authority:** PO Christopher Derco frisked § 87(2)(b) § 87(2)(b), § 87(2)(g)
- **Allegation B – Abuse of Authority:** PO Christopher Derco searched § 87(2)(b) § 87(2)(b), § 87(2)(g)
- **Allegation C – Discourtesy:** PO Christopher Derco spoke obscenely and/or rudely to § 87(2)(b) § 87(2)(b), § 87(2)(g)
- **Allegation D – Abuse of Authority:** PO Christopher Derco searched the car in which § 87(2)(b) was an occupant. § 87(2)(b), § 87(2)(g)
- **Allegation E – Abuse of Authority:** PO Christopher Derco refused to provide his name to § 87(2)(b) § 87(2)(b), § 87(2)(g)
- **Allegation F – Abuse of Authority:** PO Christopher Derco issued a summons to § 87(2)(b) § 87(2)(b), § 87(2)(g)
- § 87(4-b) § 87(2)(g)

Results of Investigation

Civilian Statement

Complainant: § 87(2)(b)

- § 87(2)(b) is a Hispanic male, 5'6" tall, 165 pounds, with black hair and brown eyes. His date of birth is § 87(2)(b). § 87(2)(b).

CCRB Testimony

§ 87(2)(b) provided a telephone statement about the incident on March 10, 2010 (encl. 4). § 87(2)(b) provided a sworn statement about the incident on March 16, 2010 (encl. 5). On March 4, 2010, at approximately 6:32 p.m., § 87(2)(b) was driving his white Mustang eastbound on East 118th Street in Manhattan, when, at a stoplight at the intersection of 2nd Avenue, two foot patrol officers dressed in uniform instructed him to roll down his window. Based on a summons issued by PO Christopher Derco to § 87(2)(b) at the end of the incident, he was one of the two officers. Based on the 25th Precinct roll call from the date of the incident, PO Christopher Reilly was his assigned partner. § 87(2)(b) described the officers as white males in their mid-20s, but he thought that PO Derco was shorter in height, 5'6" tall, and 170 pounds. He thought that PO Reilly was taller than PO Derco, about 6' tall, 200 pounds. He had difficulty describing the differences between the officers. For example, in his telephone statement, he described PO Reilly as possibly 5'10" tall, 180 pounds. The investigation found that the officers' pedigrees are quite alike: PO Derco is a § 87(2)(b)-year-old, white male, 5'7" tall, 175 pounds, and PO Reilly is a § 87(2)(b)-year-old white male, 5'7" tall, 160 pounds. § 87(2)(b) however, thought he knew what officer took what action based on that he was handed a summons by PO Derco at the end of the incident. He thought back and remembered what actions PO Derco had taken.

At the start of the incident, the officers had been standing on the sidewalk of East 118th Street on the driver side of § 87(2)(b)'s vehicle. They walked toward him, and PO Derco instructed § 87(2)(b) to pull over. § 87(2)(b) drove forward a few feet to the right by the curb. Both officers went to § 87(2)(b)'s driver side. § 87(2)(b) asked why he was being stopped, and the officers informed him that his car was too loud, in reference to the car parts on the undercarriage. They also told him that his window tints were too dark. § 87(2)(b) debated that his tints were too dark and that his car was too loud, informing the officers that his car was not modified and that its parts were stock-issued. PO Derco asked § 87(2)(b) for his license two times before he provided it. Other than questioning the officers' rationale for his stop, § 87(2)(b) denied threatening or acting aggressively toward the officers, and he denied making any sudden movements that would have made the officers think he had the intent to grab a weapon.

PO Derco told § 87(2)(b) to come out of the car and place his hands on the roof. PO Derco frisked and then searched him, patting him from his chest to his waist and then putting his hands inside of his front vest pockets. PO Derco briefly removed a slip of paper that § 87(2)(b) had in one of the pockets. § 87(2)(b) only had the slip of paper and some money notes in his pockets. § 87(2)(b) did not object to being searched but he did not condone it either. While PO Derco was searching § 87(2)(b) PO Derco said, "You smell like shit. Where you been? You all smell like shit?" § 87(2)(b) looked at PO Derco when he made the comment but did not respond to him. § 87(2)(b) did not know why PO Derco had made the remark. § 87(2)(b) said that several times during the stop he questioned their basis for stopping him. He also stated that he never acted aggressively in tone or in body movement.

PO Derco told § 87(2)(b) to walk to the rear of his vehicle with PO Reilly. At the bumper, PO Reilly talked with § 87(2)(b) telling him that he should not have given "attitude" and that he should understand he could be pulled over based on the noise of his car and its tints. While PO Reilly was standing with § 87(2)(b) PO Derco walked to the passenger side of § 87(2)(b)'s car and opened the front and back passenger doors. § 87(2)(b) did not have a direct line of vision to PO Reilly from where he was standing but he did see PO Derco open the doors and then saw PO Derco place his upper body inside the rear passenger side. § 87(2)(b) heard PO Derco "rattling" his tools around that he had in a small tool box on his back seat. PO Derco walked up to § 87(2)(b) and PO Reilly and told § 87(2)(b) to get back in his car. § 87(2)(b) could not see the officers once he was back inside his car, but after a couple of minutes PO Derco walked up to him and handed him a disorderly conduct summons and an "unreasonable noise" ticket. § 87(2)(b) asked PO Derco for his name, and PO Derco responded that it was on the summonses. § 87(2)(b) drove

away. No witnesses watched his stop and a crowd never formed while it was happening.

NYPD Statements:

Subject Officer: PO CHRISTOPHER DERCO

- *PO Derco is a white male, 5'7" tall, 175 pounds with brown hair and green eyes. His date of birth is § 87(2)(b).*
- *On the date of the incident, PO Derco was assigned to Command 174 in the 25th Precinct. He was dressed in uniform, worked on foot post 12, which is along 2nd Avenue from East 116th Street to East 120th Street. His tour was from 4:00 p.m. to 12:34 a.m., and he partnered with PO Christopher Reilly.*

Memo Book

PO Derco made the following entries in his memo book relating to the incident: At 6:32 p.m. he stopped § 87(2)(b) in a white Mustang at East 118th Street and 2nd Avenue. He issued him two summonses at 6:38 p.m., prepared a UF 250 report and then resumed patrol (encl. 6).

§ 87(2)(b) Summons

PO Derco issued summons number § 87(2)(b) to § 87(2)(b) on § 87(2)(b), for disorderly conduct (encl. 7). The subsection is 1, which according to New York State Penal Law is when a person “engages in fighting or in violent, tumultuous or threatening behavior” (encl. 0-C).

§ 87(2)(b) was also issued a traffic ticket on the date of the incident, but § 87(2)(b) did not keep a copy of it and an NYPD document request for it yielded negative results (encl. 13-B).

Stop, Question and Frisk Report (UF 250)

UF 250 number § 87(2)(b) indicates that on March 4, 2010, at 6:32 p.m., § 87(2)(b) was stopped at the intersection of 2nd Avenue and East 118th Street in Manhattan. He was frisked on suspicion of possessing a weapon. The report indicates that § 87(2)(b) was frisked, not searched, for making furtive movements, changing directions at the sight of an officer and for providing false or inconsistent responses to an officer’s questions. § 87(2)(b) was issued summons number § 87(2)(b) he was not arrested (encl. 8).

CCRB Testimony

PO Christopher Derco was interviewed at the CCRB on April 29, 2010 (encl. 9). PO Derco did not recall anything about the incident. PO Derco did not remember a car stop involving a white Mustang that had dark tints or was too loud. He did not remember preparing a UF 250 report that day. He did not recall the incident after he was presented with a copy of the report he had written. PO Derco did not recognize a photograph of § 87(2)(b) PO Derco could not recall interacting with an argumentative or evasive Hispanic male on the date of the incident. PO Derco did not recall issuing § 87(2)(b) a summons or remember why he issued § 87(2)(b) two of them. He could not recall doing a car search on that date. He could not recall if he was requested for his name by a Hispanic male. PO Derco denied having a conversation with an individual about body odor and denied telling an individual, “You smell like shit.” PO Derco said that he patrols post 12 two to three times per week and performs multiple car stops. He said that neither he nor PO Reilly was using a window tint gauge on the date of the incident.

Subject Officer: PO CHRISTOPHER REILLY

- *PO Reilly is a white male, 5'7" tall, 160 pounds with brown hair and hazel eyes. His date of*

birth is § 87(2)(b).

- On the date of the incident, PO Reilly was assigned to Command 174 in the 25th Precinct. He was dressed in uniform, worked on foot post 12, which is along 2nd Avenue from East 116th Street to East 120th Street. His tour was from 4:00 p.m. to 12:34 a.m., and he partnered with PO Christopher Derco.

Memo Book

PO Reilly did not make an entry in his memo book about the incident (encl. 10).

CCRB Testimony

PO Reilly was interviewed at the CCRB on June 8, 2010 (encl. 11). On March 4, 2010, at approximately 6:30 p.m., PO Derco and PO Reilly noticed § 87(2)(b) in his vehicle at a stoplight on East 118th Street near 2nd Avenue in Manhattan. § 87(2)(b)'s car was unreasonably loud and could potentially be heard one block away. PO Derco thought it was § 87(2)(b)'s exhaust pipe that was loud, which he thought had been modified like a race car's. PO Derco and PO Reilly were standing on the sidewalk on East 118th Street, which is a one-way street, near § 87(2)(b)'s driver side. § 87(2)(b) had his window rolled down and one of the officers told him not to drive away. Upon stopping § 87(2)(b) the officers did not discuss with each other why they were stopping § 87(2)(b) and they did not have the intention of issuing § 87(2)(b) a noise violation summons.

They walked up to him on the roadway, and PO Derco went to the driver side and PO Reilly went to the passenger side. § 87(2)(b) was "argumentative" and asked why he was being stopped and what he did wrong. The officers told him that his car was too loud. PO Derco told § 87(2)(b) to put his car in park. PO Reilly stated that when officers are on foot they tell motorists to put their cars in park in order to reduce the likelihood that the motorist will drive away on them. § 87(2)(b) drove forward several more feet before putting his car in park. PO Reilly could not recall if § 87(2)(b) parked his car at the curb or remained on the roadway. The officers again walked up to the sides of § 87(2)(b)'s car. PO Derco told § 87(2)(b) to present his license, registration and insurance. § 87(2)(b) provided his paperwork. However, he was "hostile," "argumentative" and "moving around." PO Reilly could not recall any specific statements that § 87(2)(b) made. He thought that the nature of what § 87(2)(b) was saying was a dispute of his stop. PO Reilly said that § 87(2)(b)'s behavior was very unnecessary for a routine traffic stop. PO Reilly started to grow concerned for his safety when § 87(2)(b) continued to dispute his stop. Still, PO Reilly could not recall any specific statements that § 87(2)(b) made or detail the way he was moving around. He did not see him reach for any object.

PO Reilly walked to the driver side, and he told § 87(2)(b) to exit the vehicle. He wanted him to exit because of his continued hostility and argumentativeness over a routine traffic stop. After § 87(2)(b) exited, one of the officers frisked him. PO Reilly thought that he was the officer who frisked § 87(2)(b) but he said that it could have been PO Derco because he was the officer who later prepared the UF 250 report. PO Reilly patted § 87(2)(b) from his shoulders to his knees. PO Reilly did not feel any bulges on § 87(2)(b)'s person and he determined that § 87(2)(b) did not have any contraband or weapons on him. PO Reilly did not put his hands inside of § 87(2)(b)'s pockets. When PO Reilly was frisking § 87(2)(b) he never heard PO Derco tell § 87(2)(b) that he "smelled like shit" or "You all smell like shit." PO Reilly reiterated that he frisked § 87(2)(b) because his behavior was unnecessary for a routine traffic stop, yet PO Reilly could not recall any specific statements or actions that § 87(2)(b) had made. PO Reilly was only able to say that § 87(2)(b) was "argumentative," "hostile" and acting like "something else was going on."

PO Reilly and § 87(2)(b) walked to the rear of § 87(2)(b)'s car. While they were back there, PO Reilly talked with § 87(2)(b) calming him down. He said he "got through" to § 87(2)(b). He essentially told him that he did not need to escalate a routine traffic stop. In the meantime, PO

Derco wrote § 87(2)(b)'s summons. PO Reilly thought that PO Derco had only written § 87(2)(b) one summons for unreasonable noise. PO Reilly was informed that § 87(2)(b) was also issued a disorderly conduct summons with a subsection of 1. PO Reilly did not know specifically why PO Derco issued § 87(2)(b) a disorderly conduct summons, § 87(2)(g) § 87(2)(b). PO Derco said that subsection 1 disorderly conduct summonses are routinely given for threatening behavior or fighting. PO Reilly did not know what about § 87(2)(b)'s behavior was threatening. He said that § 87(2)(b) never attracted a crowd or moved his hands in a threatening manner during the incident. There were no witnesses to § 87(2)(b)'s stop.

PO Reilly did not know if PO Derco had searched § 87(2)(b)'s car. He stated that PO Derco might have searched § 87(2)(b)'s car, but he could not remember seeing PO Derco put his body inside of § 87(2)(b)'s car. He said PO Derco was never out of his line of sight. Moreover, if PO Derco had searched § 87(2)(b)'s car, he did not know what PO Derco's reasoning for doing so would have been. § 87(2)(b) was permitted back into his car and both officers stood at § 87(2)(b)'s driver side. PO Derco handed § 87(2)(b) the summonses. Upon receiving the summonses, § 87(2)(b) was angry. PO Reilly could not further articulate how § 87(2)(b) expressed his anger. PO Reilly could not recall if § 87(2)(b) requested the officers' names and shield numbers. PO Reilly did not remember if he provided § 87(2)(b) with his name and shield number, but said he would have done so had § 87(2)(b) requested. He did not recall if PO Derco had provided his name and shield number, or if he was requested. § 87(2)(b) drove away.

NYPD Documents

25th Precinct Roll Call

According to the 25th Precinct Roll Call for March 4, 2010, PO Christopher Reilly and PO Christopher Derco were scheduled as partners during tour 3. Their tour was from 4:00 p.m. to 12:35 a.m., and they were assigned to a foot post along 2nd Avenue, between East 116th Street and East 120th Street in Manhattan (encl. 12-B).

Other Evidence

Summons for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of February 8, 2011, with regard to the incident (encl. 14).

Civilian Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 2).

Subject Officers CCRB History

- PO Christopher Derco has been a member of the service for two years and there are no

- substantiated CCRB allegations against him (encl. 1-A).
- PO Christopher Reilly has been a member of the service for two years and there are no substantiated CCRB allegations against him (encl. 1-B).

Conclusion

Identification of Subject Officers

Based on a summons, the 44th Precinct roll call and the officers' testimonies, it is undisputed that PO Reilly and PO Derco were the only two officers to interact with § 87(2)(b). However, in description, § 87(2)(b) was unable to positively tell the officers apart. § 87(2)(b) was correct in that both of the officers were white males in their mid-20s, but he was incorrect about PO Reilly being taller and heavier than PO Derco. The officers are actually the same height, 5'7" tall, and PO Derco weighs 175 pounds, whereas PO Reilly weighs 160 pounds. The investigation determined that § 87(2)(b)'s pedigree descriptions could not be relied upon to determine the officers' roles. Regardless, § 87(2)(b) alleged that PO Derco had committed all off the verbal and physical allegations. His basis for this was that he stood with one officer while another officer was searching his car and writing him summonses. That officer then handed him the summonses, and the summonses contained PO Derco's tax registry number. At the CCRB, PO Reilly admitted that he stood at the back of the car with § 87(2)(b) and saw PO Derco write a summons. Therefore, from the point where the officers' stood apart, § 87(2)(b)'s knowledge of what officer took what action was correct, and the allegations of a car search, a refusal to provide name and the issuance of an improper summons were pleaded against PO Christopher Derco.

Regarding the former allegations, the investigation determined that § 87(2)(b)'s descriptions of what officer took what action could not be relied upon because he could not tell the two officers apart when they stood together. Further, PO Reilly stated that he may have performed the frisk. He denied searching or speaking discourteously to § 87(2)(b) but § 87(2)(b) alleged that those occurrences all happened in a congruent time frame and were done by only one officer. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
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§ 87(2)(b), § 87(2)(g)

Investigative Findings and Recommendations

Allegation Not Pleaded

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)

Allegation A – Abuse of Authority: PO Christopher Derco frisked § 87(2)(b)

§ 87(2)(b) alleged that PO Derco had frisked and searched him. PO Reilly, however, presumed that he was the officer who frisked § 87(2)(b) and PO Derco did not recall the incident. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)

Allegation B – Abuse of Authority: PO Christopher Derco searched § 87(2)(b)

§ 87(2)(b) alleged that after he was frisked, PO Derco placed his hands inside of his front vest pockets and thus searched him. PO Derco could not recall the incident. PO Reilly admitted to performing a frisk but denied performing a search, stating that he discovered no weapons on § 87(2)(b)'s person and thus did not need to perform a search. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation C – Discourtesy: PO Christopher Derco spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(b) :

§ 87(2)(b) alleged that while he was being frisked and searched, PO Derco told him that he smelled like shit. § 87(2)(b) did not know why he was told this. For example, he said that he did not smell and he did not know if the statement was meant as a bigoted remark. Even though PO Derco did not recall the incident, he denied telling an individual a statement to that effect or having a conversation about body odor. PO Reilly denied that PO Derco made that statement or anything to that effect, and he denied ever having a conversation with § 87(2)(b) about body odor.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation D – Abuse of Authority: PO Christopher Derco searched the car in which § 87(2)(b)

§ 87(2)(b) **was an occupant.**

§ 87(2)(b) and PO Reilly agreed that they stood together at the back of § 87(2)(b)'s vehicle while PO Derco was standing elsewhere. § 87(2)(g)

§ 87(2)(b) stated that PO Derco opened his vehicle doors and put the upper half of his body inside the rear passenger area of his vehicle. However, since he was talking with PO Reilly at that time, he did not keep his eyes on PO Derco and only heard him “rattling” around his tools that he keeps in a tool box on his back seat. PO Derco did not recall performing a car search on the date of the incident. PO Reilly stated that he did not pay attention to PO Derco when he was standing at the back of the car with § 87(2)(b) and PO Reilly did not learn from PO Derco that he had performed a car search. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation E – Abuse of Authority: PO Christopher Derco refused to provide his name to § 87(2)(b)

§ 87(2)(b) :

§ 87(2)(b) alleged that after he was handed his tickets, he asked that officer for his name. The officer responded that it was on the summons. § 87(2)(b) read his summons and learned that PO Derco was the officer at whom he directed his request. PO Derco could not recall if he provided his name to any individual on the date of the incident. PO Reilly also could not recall if § 87(2)(b) requested his or PO Derco's name, though he was close by when PO Derco handed § 87(2)(b) his

summonses. PO Derco stated, however, that whenever he or PO Reilly is asked for his identifying information, they verbally provide it. § 87(2)(b), § 87(2)(g)

Allegation F – Abuse of Authority: PO Christopher Derco issued a summons to § 87(2)(b)

During his car stop, § 87(2)(b) disputed the officers’ rationale for his traffic ticket, essentially telling the officers that his car was not modified and that it was not too loud. He denied raising his voice or attracting attention. It is undisputed that there was foot traffic in the area at the time of the incident, but no individual stopped and watched what was happening. § 87(2)(g)

§ 87(2)(b) PO Reilly stated that § 87(2)(b) was being “argumentative” and “moving around” inside his car. PO Reilly was unable to elaborate on the extent of § 87(2)(b)’s argument, but he did state that § 87(2)(b) did not yell. § 87(2)(b) was subsequently instructed to exit his car, and once outside of the car, he refrained from further dispute. Unaware to PO Reilly at the time of incident, PO Derco issued § 87(2)(b) a disorderly conduct summons with the subsection of 1. The summons does not describe § 87(2)(b) § 87(2)(b)’s alleged offense (encl. 7).

According to New York State Penal Law section 240.20, “A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof.” Subsection 1 of the law states that the person must have “engage[d] in fighting or in violent, tumultuous or threatening behavior” (encl. 0-A). Case law pertaining to disorderly conduct, in particular People v. Eugene Square, 872 N.Y.S.2d 693, (2008), states that a person is not guilty of an offense when he or she merely expresses to the officer that he or she feels aggrieved about the alleged offense, even when the grievance is expressed in a loud voice (encl. 0-B).

§ 87(2)(b) said he felt aggrieved by his traffic ticket and stated such during his incident, but § 87(2)(b) and PO Reilly indicated that § 87(2)(b) did not intend to cause public inconvenience. This is exhibited in the fact that no bystanders watched the stop. § 87(2)(b), § 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

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Team: _____

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Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date